IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Tr.P(Crl.).No. 6 of 2007()

CMP.33/2007 of JUDL. MAGI. OF FIRST CLASS-III, KOTTAYAM

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PETITIONER:

M.A.MONY, AGED 54 YEARS,
S/O.ACHUTHAN, AMBADIYIL HOUSE,
KADAMURI, PARIYARAM, KOTTAYAM.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS: COMPLAINANT/STATE

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1. M.P.LEELAMMA, D/O.PADMANABHAN,
APARNA, KAILAS, VAZHAPPALLY P.O.,
CHANGANASSERY.

2. STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.K.GOPALAKRISHNA KURUP
SRI.K.N.RAMACHANDRAN NAIR
SRI.S.MANU
SRI.R.ANILKUMAR

R2 BY PUBLIC PROSECUTOR SRI.C. M. KAMAPPU

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 29/03/2007, ALONG WITH CRMC NO. 165 OF 200T THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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T.P.(Cr).No. 6 of 2007 &
Crl.M.C.No. 165 of 2007

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Dated this the 29th day of March, 2007

O R D E R

Does the availability of alternative options for grievance redressal, deprive the aggrieved person of her right to approach the Magistrate with a petition under Section 12 of the Protection of Women from Domestic Violence Act? Does this Court have power to direct transfer of a petition under Sec.12 pending before the Magistrate to a Family Court, where another dispute between the same parties is pending? These questions arise for consideration in these petitions. I am satisfied and both counsel agree that this transfer petition and the Crl.M.C. can be disposed of by a common order. Accordingly, I have taken up both these matters together for consideration.

2. The first respondent in these petitions is admittedly the wife of the petitioner herein. The marriage had taken place as early as on 8.11.1977. The parties are living separately from 11.4.1982. It is unnecessary to refer to the prior history of litigations between the parties. Suffice it to say that at the moment two petitions are pending

before the Family Court at Kottayam. The first is for divorce filed by the petitioner herein and the second is an Original Petition claiming an amount of Rs. 36,55,000/- under various heads by the first respondent against the petitioner. There are other reliefs also claimed in the said petition before the Family Court.

3. While those petitions were pending before the Family Court, the Protection of Women from Domestic Violence Act, hereinafter referred to as DVA, was enacted by the Parliament and rules were framed. The 1st respondent herein, in these circumstances, filed C.M.P.No. 33 of 2007 before the Judicial First Class Magistrate - III, Kottayam claiming reliefs under Sections 19, 20 and 22 of the DVA. An application in the prescribed form-II was filed under Section 12 of the DVA claiming the said reliefs.

4. The petitioner has received notice in C.M.P. 33 of 2007 issued by the learned Magistrate. The petitioner had appeared before the learned Magistrate. After entering appearance, the petitioner has come straight to this Court and filed these petitions.

5. Transfer petition No.6 of 2007 is filed by the petitioner to transfer C.M.P. 33 of 2007 from the file of the J.F.C.M. -III, Kottanam to the

Family Court, Kottayam at Ettumanoor, where the above said Original Petitions between the parties are pending.

6. Crl.M.C. 165 of 2007 has been filed by the petitioner for quashing all proceedings initiated by the first respondent by filing an application under Section 12 of the DVA claiming reliefs under Sections 19, 20 and 22 of the Act.

7. I have heard the learned counsel for the petitioner and the first respondent in detail. I shall first deal with the prayer for transfer of the case.

8. The Protection of Women from Domestic Violence Act, 2005 is a piece of legislation brought in by the Parliament as the Parliament felt that the civil law does not provide reliefs to a victim woman subjected to domestic violence. It is in these circumstances, to provide for a remedy under the civil law for protection of women from being victims of domestic violence, that the DVA was brought in by the Parliament. It will be apposite to take note of the fact that though it is a piece of civil law, evidently in the interests of expedition and to cut down procedural delays, the forum provided for enforcement of rights under DVA is that of the Magistrate Courts constituted under the provisions of the Cr.P.C. A

reading of the Introduction, Statement of objects and reasons and Preamble etc. makes the position absolutely clear. There is no provision anywhere in the Act which permits or authorises transfer of a petition filed under Section 12, which is pendings before the Court of a Magistrate to any other court. Powers under the Cr.P.C. do not evidently clothe superior courts with power to transfer a proceeding pending before a criminal court to any other civil court. Though the rights created and the reliefs granted under the DVA are essentially civil in nature, significantly there is no provision in the Act for transfer of such a civil claim pending before the Magistrate to any other civil court. In the absence of specific provisions to that effect, I am of the opinion that the superior courts do not have the power to transfer a petition under Section 12 pending before the Magistrate to any civil court or Family Court as the case may be. The prayer made is thus on the face of it not maintainable. Such a power if inferred or assumed would virtually deprive the aggrieved woman of the right to expeditious procedure for enforcement of her civil rights under the DVA through the structures established under the Code of Criminal Procedure, which the Parliament in its wisdom had conferred on her.

9. The learned counsel for the petitioner submits that though there is no specific provision to transfer a claim under Section 12 of the DVA to any other civil court, this Court should not lose sight of the nature of the reliefs that can be claimed under Section 12 r/w. Section 18 to 23. Essentially rights conferred and which can be claimed are civil rights. The counsel further submits that the stipulations of Section 26(1) must also convey that the reliefs under Sections 18 to 22 of the DVA can also be sought in any pending proceedings before a civil court, Family Court or criminal court. I extract Section 26(1) below:

> "S.26. Relief in other suits and legal proceedings. - (1) Any relief available under Sections 18, 19, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act."

10. The learned counsel submits that in view of the stipulations in Section 26(1), there cannot be a bar against transfer of a claim under Section 12 to any such civil court or family court. The counsel further submits that Section 7(2)(b) of the Family Courts Act, which I extract below, is also sufficient to indicate that the Family Court has jurisdiction to deal with a claim under Section 12.

> S. 7. Jurisdiction - (1) Subject to the other provisions of this Act, a Family Court shall -
>
> xx xx xx
>
> (2) Subject to the other provisions of the Act, a Family Court shall also have and exercise --
>
> (a) xxx xxxx
>
> (b): such other jurisdiction as may be conferred on it by any other enactment.

I am unable to accept this argument at all. Though under Section 7(2)(b), the Family Court is clothed with authority to deal with matters, which, under any other law the Family Court can consider, it is significant that the Family Court is not invested with any power to deal with an application under Section 12 of the DVA. That reliefs under Sections 18 to 22 can be claimed before the Family Court in any other proceedings is a world different from the contention that a petition under Section 12 can be considered and disposed of by the Family Court. There is nothing in the language, scheme or purport of the DVA, which can even remotely suggest that a Civil court or Family Court is competent to deal with an application under Section 12 and grant reliefs under Sections 18 to 22 in such application under Section 12. Of course, the Family Court and the Civil

Court have the jurisdiction in a proceedings pending before it to grant the reliefs under Sections 18 to 22 of the DVA also. But certainly there is no power for the Family Court or Civil Court to deal with an application under Section 12. They cannot entertain an application under Section 12 either when it is originally filed before them nor can the superior courts entertain any jurisdiction to transfer such petition under Section 12 pending before the Magistrate to such Civil or Family Court so that such court can entertain jurisdiction to deal with an application under Section 12. The decision of the Legislature to confer the right to redressal through the criminal court cannot obviously be denied to or taken away from an aggrieved woman by such an order of transfer by the superior court. That she can claim the reliefs under the DVA through the civil court also is no reason to deprive her of the vested statutory right of procedure to claim enforcement through the Criminal Court. I, therefore, take the view that except the Magistrate clothed with authority to deal with petitions under Section 12 of the DVA, no Civil Court or Family Court has jurisdiction to deal with an application under Section 12. Consequently this Court cannot direct transfer of a petition under Section 12 pending before the Magistrate to the Family Court and thus clothe the Family Court with jurisdiction to

consider such application under Section 12. The prayer for transfer cannot hence succeed.

10. Now we come to the prayer for quashing of proceedings initiated under Section 12 of the DVA . Three grounds are urged in support of this contention. First of all, it is contended that the Court of the learned Judicial Magistrate of the First Class-III, Kottayam, has no territorial jurisdiction to deal with the matter. Sec.27 of the DVA which I extract below deals with the jurisdiction of the courts:

> "27. Jurisdiction.--(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which---
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> (a) the person aggrieved permanently or temporarily resides or carries on business or is employed;
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> (b) the respondent resides or carries on business or is employed; or
>
> (c) the cause of action has arisen,
>
> shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India."

(emphasis supplied)

A Judicial Magistrate of the First Class or the Metropolitan Magistrate as the case may be within the local limits of which the person aggrieved permanently or temporarily resides does also have territorial jurisdiction to deal with the matter as stipulated in Sec.27(1)(a) of the DVA.

11. The learned counsel for the 1st respondent points out that the petitioner, it has been clearly averred in the affidavit filed along with the petition, has in connection with her employment, now taken up residence within the jurisdiction of the learned Judicial Magistrate of the First Class-III, Kottayam. That being so, I find no merit in the contention at this stage that the court has no jurisdiction to deal with the matter.

12. It is then contended that the overlapping claims have been made before the Family Court as also before the learned Magistrate. Three claims are made in the application under Section 12 under three specific heads. Claim under Section 19 is for an order of residence. Admittedly, the right of residence is claimed in a building over which, as per the records, the petitioner has title. In the proceedings before the Family Court

- O.P.No.455/04 - declaration of title of the very same property has been claimed by the 1st respondent on the plea that the said property has been purchased making use of her funds and she is consequently entitled for such a declaration. That claim before the Family Court relates to title over the property, whereas the claim here in this petition under Sec.12 read with Sec.19 is for a right of residence in the property which the petitioner claims to be his own. If declared by the Family Court, no order for residence need be insisted. But at the moment as per the documents, title vests in the petitioner and therefore the claim for an order of residence under Sec.19 is in no way affected by the claim for declaration of title in the O.P. pending before the Family Court.

13. Under Secs.20 and 22 of the DVA monetary reliefs and compensatory reliefs can be claimed. On a perusal of the petition in Form-II filed by the respondent, it can be seen that a composite claim has been made both under Secs.20 and 22 obviously because of an error in Form-II prescribed, in which columns 3(iii) and 3(iv) do both relate to monetary reliefs under Sec.20. A composite claim under Secs.20 and 22 for Rs.15 lakhs is evidently made in Clause 3(iv) of Form-II. It is possible on a perusal of the break up of the claim of Rs.36.55 lakhs in O.P.No.455/04 and

the claim under Clause 3(iv) of the petition under Sec.12 in Form-II, to conclude that there is overlapping of the claims. But I must alertly note that the scheme of the Act does appear to contemplate such overlapping claims made before the other courts and the court (Magistrate) under the DVA. The proviso to Sec.12(2), which I extract below, makes the position amply clear:

> "12. Application to Magistrate.--(1)
>
> x x x x x x x x
>
> (2) x x x x x x x x
>
> Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off."

Even if the monetary/compository claim is allowed under Sec.12, such payment has to be set off against the amounts due under the identical heads as per the decree or order of any other court. Therefore, it may not be correct to assume rigidly that overlapping of claims must lead to the

quashing of the proceedings under the DVA. The said ground cannot also, in these circumstances, be held to be sufficient to non-suit the 1st respondent.

14. The same argument in a different form is advanced with the help of Sec.26 of the DVA as the third ground. The learned counsel contends that the 1st respondent shall be entitled to claim the relief under Secs.19, 20 and 22 before the Family Court in the pending proceedings and therefore it is not necessary or open to her to stake the identical claim under Sec.12 of the DVA. The answer to that contention also is clearly available from the proviso to Sec.12(2), which I have extracted above, which shows that notwithstanding the option to claim identical relief elsewhere, the jurisdiction of the Magistrate under the DVA is not ousted. The option clearly vests with the claimant/aggrieved woman. That she has exercised her statutory right to claim the amount under Section 12 r/w. Sections 20 and 22 of the DVA cannot obviously lead to quashing of proceedings.

15. The upshot of the above discussions is that the petitioner is not entitled for the relief of transfer or that of quashing of the proceedings initiated under Sec.12.

16. I must alertly observe that I have not intended to express any opinion on the merits of the claim made under Sec.12 read with Secs.19, 20 and 22 of the DVA. I have only chosen to hold that the powers under Sec.482 of the Cr.P.C. - the extraordinary inherent jurisdiction - does not deserve to be invoked to prematurely terminate the proceedings initiated under Sec.12 of the DVA. It shall be open to the petitioner to raise all relevant, necessary and appropriate contentions before the learned Magistrate, who shall consider such contentions and pass appropriate orders.

17. These petitioners are accordingly dismissed.

(R. BASANT)
Judge

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